



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 11, 1995

Ms. Mercedes Leal
Senior Assistant County Attorney
Harris County Attorney
1001 Preston Street, Suite 634
Houston, Texas 77002-5101

OR95-1067

Dear Ms. Leal:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34505.

The Harris County Constable's office, Precinct No. 4, (the "county") received a three-part open records request for 1) distributed procedure and regulation manuals along with a list of individuals who are required to approve such procedure and evaluation manuals, 2) evaluation reports and complaints regarding a certain named officer, and 3) a copy of all complaints "against any other officers ever under your command as well as yourself." You contend that the information requested is excepted from required public disclosure pursuant to sections 552.103 and 552.108 of the Government Code. You have submitted for our review the documents at issue labeled Exhibits 2-4a.

Regarding the request for a list of individuals who approve the policies, procedures, and regulations of the office, you contend that, since no such list exists, the county is not required under the Open Records Act to prepare a list of these individuals. A governmental body must make a good faith effort to relate a request to information that it holds. Open Records Decision No. 561 (1990). Information must exist in written or other documentary form before the information can be subject to a request for disclosure under the Open Records Act. Open Records Decision No. 605 (1992) at 2. The Open Records Act applies only to information in existence and does not require a governmental body to prepare new information. *Id.* Provided you have met these requirements, then you need not provide the requested list.

You have submitted to this office for review Exhibit 2 which consists of the entire Precinct 4 Constable's *Policy and Ethics Manual* together with an acknowledgment page. Additionally, you submit as Exhibit 3, the complete *Harris County Precinct #4 Constable's Department Standard Operating Procedures*. You contend that these manuals are excepted from required public disclosure in their entirety pursuant to section 552.108 of the Government Code, commonly referred to as the "law enforcement" exception.

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). The primary purposes of the section 552.108 exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records for evading detection and capture, *see* Open Records Decision Nos. 133 (1976), 127 (1976), and to protect the safety of police officers. *See, e.g.*, Open Records Decision No. 531 (1989). Whether disclosure of particular records will unduly interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981).

You claim generally that both manuals are excepted from public disclosure in their entirety because:

These documents contain information dealing with the Constable's internal procedures for detecting, investigating and prosecuting crime.

In briefly reviewing the manuals, we were quickly able to identify many portions that clearly do not come within the purview of the section 552.108 exception. For example, the *Policy and Ethics Manual's* recitation of the Department Mission Statement and the Crisis Hotlines (Information and Referral) from the *Constable's Department Standard Operating Procedures* do not come under the protection of section 552.108. It appears that you have made no effort to identify the portions of the manual that the county could safely release to the requestor without threatening effective law enforcement.

Under the Open Records Act, all information held by a governmental body is open unless the information falls within one of the act's specific exceptions to disclosure. The act places upon the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, or explain how that exception applies, the exception is ordinarily waived unless the information is deemed confidential under the act. *See* Attorney General Opinion JM-672 (1987). Furthermore, it is well established that when one of the act's exceptions is clearly not applicable to all of the information in a requested record a general claim that

the exception applies to the entire record does not comport with the act's procedural requirements. See Open Records Decision No. 150 (1977) at 2. We therefore conclude that you have not met your burden under the Open Records Act to establish the extent to which section 552.108 applies to the manuals' contents. The manuals submitted as exhibits 2 and 3 are therefore presumed to be public information and must be released to the requestor in their entirety unless you can demonstrate compelling reasons for withholding specific portions of the manuals.

You contend that the information submitted as exhibits 4 and 4a, which are responsive to the second and third part of the open records request, is excepted from required public disclosure pursuant to section 552.103(a) of the Government Code, the litigation exception, because the information is related to a pending lawsuit.¹ You have submitted for our review a copy of a complaint filed in federal court naming as defendants the officer who is the subject of part 2 of this open records request, the precinct 4 constable, and other county officials regarding allegations of misconduct and civil rights violations. You inform us that the assistant county attorney handling this civil lawsuit has not released to the plaintiff any documents that are responsive to parts 2 and 3 of the request. You state that the assistant county attorney objects to the release of documents responsive to these portions of the request.

In this instance you have made the requisite showing that the information sought by the requestor in parts 2 and 3 of the request relate to pending litigation for purposes of section 552.103(a). The records requested by parts 2 and 3 of the request may therefore be withheld. In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

¹You state that complaints against other officers is in a form substantially similar to what is submitted to this office as exhibit 4. Consequently, we treat exhibit 4 as a representative sample of the information requested by part 3 of the request. In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kathryn P. Baffes". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/rho

Ref: ID# 34505

Enclosures: Submitted documents

cc: Mr. Richard Cinta
c/o 1200 Encino
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(w/o enclosures)